

AMENDED IN ASSEMBLY MAY 1, 2001

AMENDED IN ASSEMBLY APRIL 16, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 1453

**Introduced by Assembly Member Koretz
(Coauthor: Assembly Member Vargas)**

February 23, 2001

An act to add Division 8.7 (commencing with Section 22970) to the Business and Professions Code, ~~and to add Article 1.5 (commencing with Sections 104490) to Chapter 1 of Part 3 of Division 103 of the Health and Safety Code,~~ relating to tobacco products.

LEGISLATIVE COUNSEL'S DIGEST

AB 1453, as amended, Koretz. Tobacco: display and use limitations.

Existing law provides for the establishment of programs relating to tobacco use prevention.

This bill would prohibit any person, firm, or corporation that displays at one or more retail locations any ~~marketing device sign or placard~~ intended to advertise or promote the sale or consumption of any cigarette or tobacco product, ~~including, but not limited to, shelf signs, window stickers or posters, and coupon dispensers,~~ from placing the ~~marketing device the sign or placard~~ at a level that is lower than 3 feet from the floor, and would impose civil penalties for a violation of that provision.

This bill would also prohibit any person, firm, or corporation from displaying or making available any ~~matches or~~ ashtrays for public use

on the premises where smoking is prohibited with specified exceptions, and ~~if this provision is violated~~ would impose civil penalties for a ~~violation~~ violations of that ~~this~~ provision.

~~This bill would additionally prohibit smoking a cigarette, cigar, or pipe within 100 feet of any designated area in which children may reasonably be expected to congregate and would make violation of that prohibition an infraction. This bill, by creating a new infraction, would result in a state-mandated local program.~~

This bill would also prohibit the distribution of free samples of tobacco products by mail to anyone ~~whose age~~ ~~who~~ has not been previously identified as a ~~smoker~~ ~~consumer of tobacco products who is~~ 18 years of age or older ~~and would impose civil penalties for a violation of this provision.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~yes~~ *no*.

The people of the State of California do enact as follows:

1 SECTION 1. Division 8.7 (commencing with Section 22970)
2 is added to the Business and Professions Code, to read:

3
4 DIVISION 8.7. CHILDREN'S PROTECTION FROM
5 TOBACCO ACT
6

7 22970. This division shall be known and may be cited as the
8 Children's Protection from Tobacco Act of 2001.

9 22971. (a) Any person, firm, or corporation that displays at
10 one or more retail locations any ~~marketing device sign or placard~~
11 intended to advertise or promote the sale or consumption of any
12 cigarette or tobacco product, ~~including, but not limited to, shelf~~
13 ~~signs, window stickers or posters, and coupon dispensers, shall not~~
14 ~~place the marketing device~~ *tobacco product shall not place the*
15 *sign or placard* at a level that is lower than three feet from the floor.

1 ~~(b) For purposes of this section, the product itself shall not be~~
2 ~~considered a marketing device.~~

3 *(b) This section shall not apply to the product itself or to signs*
4 *or placards used in connection with or as part of a product display*
5 *fixture.*

6 (c) The State Department of Health Services shall assess a civil
7 penalty for each violation of subdivision (a) according to the
8 following schedule:

9 (1) A civil penalty of five hundred dollars (\$500) for the first
10 violation.

11 (2) A civil penalty of seven hundred fifty dollars (\$750) for the
12 second violation at the same location within a five-year period.

13 (3) A civil penalty of one thousand dollars (\$1,000) for the
14 third or subsequent violation at the same location within a
15 five-year period.

16 22972. (a) Except as provided in subdivisions (b) and (c), no
17 person, firm, or corporation shall display or make available
18 ~~matches or ashtrays, or both ashtrays,~~ for public use on the
19 premises where smoking is prohibited under existing state law.

20 (b) Notwithstanding subdivision (a), a receptacle for
21 tobacco-related waste may be placed within five feet of a door
22 available for public entry onto the premises.

23 (c) Notwithstanding subdivision (a), ~~matches or ashtrays, or~~
24 ~~both ashtrays,~~ may be sold or distributed to the public on premises
25 where smoking is prohibited but only for use in areas where
26 smoking is not prohibited.

27 (d) The State Department of Health Services shall assess the
28 civil penalty for each violation of subdivision (a) according to the
29 following schedule:

30 (1) A civil penalty of two hundred fifty dollars (\$250) for the
31 first violation.

32 (2) A civil penalty of five hundred dollars (\$500) for the second
33 violation *at the same location within a five-year period.*

34 (3) A civil penalty of one thousand dollars (\$1,000) for the
35 third and subsequent violation *at the same location* within a
36 five-year period.

37 22973. (a) No person, firm, or corporation shall provide free
38 samples of ~~tobacco products~~ *any tobacco product* by mail to
39 anyone who has not been previously identified as a ~~smoker~~
40 *consumer of tobacco products who is 18 years of age or older.*

(b) The State Department of Health Services shall assess the civil penalty for each violation of subdivision (a) according to the following schedule:

(1) A civil penalty of two hundred fifty dollars (\$250) for the first violation.

(2) A civil penalty of five hundred dollars (\$500) for the second violation *at the same location within a five-year period*.

(3) A civil penalty of one thousand dollars (\$1,000) for the third and subsequent violation *at the same location* within a five-year period.

22974. (a) This division shall not preempt or otherwise prohibit the adoption of a local standard that imposes greater restrictions on the promotion of, use or access to tobacco products than the restrictions imposed by this ~~section~~ *division*.

(b) To the extent that there is an inconsistency between this section and a local standard that imposes greater restrictions on the promotion of, or the use or access to, tobacco products, the greater restriction on the promotion of, or, use or access to, tobacco products in the local standard shall prevail.

~~SEC. 2. Article 1.5 (commencing with Section 104490) is added to Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, to read:~~

~~Article 1.5. Public Area Smoking Prohibitions~~

~~104490. (a) No person shall smoke a cigarette, cigar, or pipe within 100 feet of the boundaries of any public area during any period in which children may reasonably be expected to congregate at that public area, including, but not limited to, zoos, parks, playgrounds, fairgrounds, carnivals, athletic fields, and amusement parks that has been designated by the operator of that public area as a nonsmoking area.~~

~~(b) Any person who violates subdivision (a) is guilty of an infraction and shall be punished by a fine by the following schedule:~~

~~(1) One hundred dollars (\$100) for the first violation.~~

~~(2) Two hundred dollars (\$200) for a second violation.~~

~~(3) Three hundred dollars (\$300) for a third or subsequent violation within a five-year period.~~

1 ~~104491. The following definitions shall govern the~~
2 ~~construction of this article, unless the context requires otherwise:~~

3 ~~(a) “Cigarette” means the same as defined in Section 104556.~~

4 ~~(b) “Cigar” means the same as defined in Section 104550.~~

5 ~~SEC. 3. No reimbursement is required by this act pursuant to~~
6 ~~Section 6 of Article XIII B of the California Constitution because~~
7 ~~the only costs that may be incurred by a local agency or school~~
8 ~~district will be incurred because this act creates a new crime or~~
9 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
10 ~~for a crime or infraction, within the meaning of Section 17556 of~~
11 ~~the Government Code, or changes the definition of a crime within~~
12 ~~the meaning of Section 6 of Article XIII B of the California~~
13 ~~Constitution.~~

